

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**United States Courts
Southern District of Texas
FILED**

NOV 10 2004

**KATHY PEREZ AND
ROGELIO MUNOZ, JR.**

Michael M. Milby, Clerk of Court

VS.

CIVIL ACTION NO.: _____

**CLAYTON HOMES, INC.; CMH HOMES,
INC.; VANDERBILT MORTGAGE AND
FINANCE, INC.; BENJAMIN JOSEPH
FRAZIER and KEVIN T. CLAYTON**

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NOTICE OF REMOVAL

**NOW COME CLAYTON HOMES, INC.; CMH HOMES, INC.; VANDERBILT
MORTGAGE AND FINANCE, INC.; BENJAMIN JOSEPH FRAZIER; AND KEVIN T.
CLAYTON, Defendants, and state the following:**

1. Defendants file this Notice of Removal of the above-styled action currently pending in the 229th Judicial District Court in Duval County, Texas, Cause No. DC-04-334, pursuant to 28 U.S.C. §§1331, 1441, and 1446. This Honorable Court has jurisdiction over the action under the aforementioned statutes.

2. This case involves a question arising under the laws or constitution of the United States, in that Plaintiff, by and through his Original Petition, as amended, have pled a cause of action (denominated "civil conspiracy" and "fraud" in their section headings) which states no cognizable claim or cause of action under substantive state law, but which purports to state a claim under the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1961 et. seq. While Defendants expressly deny that they or any of them are liable under the terms of such Act, the

allegations set forth by Plaintiff nonetheless fall clearly within the framework of the civil remedies component of the Act set forth at §1964 thereof (i.e., an allegation of trafficking in forged or fraudulent “securities” as the term is defined at 18 U.S.C. §§ 2311 and 2314). This case has been pending less than one year, and this removal is effected less than thirty (30) days after Defendants’ receipt of the first amended pleading filed by Plaintiff which states a federal claim or cause of action. Jurisdiction over the subject matter of this suit is proper pursuant to 28 U.S.C. § 1331.

3. Attached hereto is the index and list of counsel required under the local rules of this Honorable Court.

4. True and correct copies of all pleadings and process received by or served on Defendants, and all pleadings filed in the 229th Judicial District Court in Duval County, Texas herein, are attached hereto.

5. Promptly after the filing of this notice, written notice of such filing will be given by Defendants to all other parties to this action as required by law, and a copy of this notice is also being filed with the Clerk of the District Court, Duval County, Texas, in which this cause was originally filed.

6. All Defendants join in this removal.

WHEREFORE, Defendants ask that this Court effect the removal of this action from the 229th Judicial District Court in Duval County, Texas, to this Court, and for such other relief to which Defendants are entitled.

Respectfully submitted,

**THORNTON, SUMMERS, BIECHLIN,
DUNHAM & BROWN, L.C.**

Bank of America - Suite 1000
500 North Shoreline Blvd.
Corpus Christi, Texas 78471
361/ 884-2037 Fax: 361/ 884-5239



Joseph L. Segrato

Federal Id No: 19965

State Bar No: 17993000

Robert L. Guerra

Federal Id No: 3781

State Bar No: 08578560

Vaughan E. Waters

Federal ID. No: 9206

State Bar No. 20916700

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served in accordance with the Federal Rules of Civil Procedure, on this the 10th day of November, 2004.

Mr. Jeffrey G. Wigington

Mr. David L. Rumley

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Vaughan E. Waters

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**KATHY PEREZ AND
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VS.

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INC.; VANDERBILT MORTGAGE AND
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CIVIL ACTION NO.: _____

INDEX

1. Civil Cover Sheet.
2. Counsel of Record.
3. Defendants' Notice of Removal with copies of pertinent State Court pleadings as follows:
 - a. Civil Docket Sheet;
 - b. Plaintiffs' Original Petition;
4. Notice of Removal to Plaintiff.

Respectfully submitted,

**THORNTON, SUMMERS, BIECHLIN,
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Vaughan E. Waters

**79TH JUDICIAL DISTRICT COURT
JIM WELLS COUNTY**

Cause No. 04-07-42694	Teofilo Alaniz and Elvira Alaniz
Cause No. 04-07-42691	Guadalupe G. Barrera and Delma Barrera
Cause No. 04-07-42683	Frank C. Benavides
Cause No. 04-07-42684	Guadalupe Cardona, Jr.
Cause No. 04-07-42686	Patricia Farias
Cause No. 04-07-42685	Rachel Farias, Raul Farias, Alfredo Farias, III, Sylvia F. Godines, Roxanne Trevino, Richard Trevino, Rita Ramos, and Evelia Farias
Cause No. 04-07-42688	Martin Gonzalez and Mary Ann Gonzalez
Cause No. 04-07-42693	Elizandro G. Herrera a/k/a Leo Herrera
Cause No. 04-07-42692	Oscar Ortiz and Isabel V. Ortiz
Cause No. 04-07-42689	Rolando Ramos
Cause No. 04-07-42690	Josefa Torres Sanchez
Cause No. 04-10-42877	Jose Falcon, Debbie Lee Falcon, Jesus Falcon, Jr., Juan Luis Falcon and Olinda Rivera
Cause No. 04-10-42878	Odelia S. Rodriguez
Cause No. 04-10-42880	Blas Ruiz, Jr.
Cause No. 04-10-42879	Veronica R. Garza
Cause No. 04-10-42881	Antonio M. DeLeon
Cause No. 04-07-42687	Marcelino Garza and Manuela Garza

229TH JUDICIAL DISTRICT COURT DUVAL COUNTY

Cause No. DC-04-138	Nora Cavazos and Idolina C. Galvan
Cause No. DC-04-188	Manuel G. Chapa
Cause No. DC-04-258	Guillermo Clarke, III and Edith Clarke Both Individually and as Next Friend of Johnathan Clarke, A Minor
Cause No. DC-04-134	Esterelda S. Escamilla, Jesus Saavedra, Jr., and Esmeralda S. Trevino
Cause No. DC-04-173	Carlos Garcia and Emeteria N. Garcia
Cause No. DC-04-259	Minerva Martinez as Next Friend of Maria J. Gaitan
Cause No. DC-04-140	Orlando Morin
Cause No. DC-04-174	Horacio Oliveira and Lydia Olivarez
Cause No. DC-04-139	Anita Perez
Cause No. DC-04-133	Jose Sanchez
Cause No. DC-04-257	Pedro S. Sanchez and Velia S. Sanchez
Cause No. DC-04-189	Teodulo Saenz
Cause No. DC-04-137	Vicente Saenz
Cause No. DC-04-136	Zulema Uribe
Cause No. DC-04-335	Odelia Garza
Cause No. DC-04-332	Homero Contreras
Cause No. DC-04-338	Domingo Santos and Esmeralda Santos
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Cause No. DC-04-334	Kathy Perez and Rogelio Munoz, Jr.
Cause No. DC-04-336	Martin Contreras
Cause No. DC-04-337	Leobardo Perez
Cause No. DC-04-135	Jose Luis Garza and Marcelina Garza

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**KATHY PEREZ AND
ROGELIO MUNOZ, JR.**

VS.

**CLAYTON HOMES, INC.; CMH HOMES,
INC.; VANDERBILT MORTGAGE AND
FINANCE, INC.; BENJAMIN JOSEPH
FRAZIER and KEVIN T. CLAYTON**

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CIVIL ACTION NO.: _____

COUNSEL OF RECORD

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San Diego, Texas 78384



Vaughan E. Waters

CAUSE NO: DC-04-334

KATHY PEREZ AND	§	IN THE DISTRICT COURT
ROGELIO MUNOZ, JR.	§	
	§	
VS.	§	229TH JUDICIAL DISTRICT
	§	
CLAYTON HOMES, INC.;CMH HOMES,	§	
INC.; VANDERBILT MORTGAGE AND	§	
FINANCE, INC.; BENJAMIN JOSEPH	§	
FRAZIER and KEVIN T. CLAYTON	§	DUVAL COUNTY, TEXAS

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THIS COURT:

Please take notice that CLAYTON HOMES, INC.; CMH HOMES, INC.; VANDERBILT MORTGAGE AND FINANCE, INC.; BENJAMIN JOSEPH FRAZIER; AND KEVIN T. CLAYTON, Defendants in this action, pursuant to federal law, filed with the clerk in the United States Court for the Southern District of Texas, Corpus Christi Division, a Notice of Removal, a copy of which is attached and filed with this document, and that this action is removed to the United States District Court for trial as of today, the 10th day of November, 2004. This Court is respectfully requested to proceed no further in this action, unless and until such time as the action may be remanded by Order of the United States District Court.

3

Respectfully submitted,

**THORNTON, SUMMERS, BIECHLIN,
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Attorneys for Defendants

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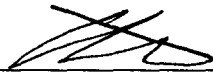
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Vaughan E. Waters

Kelling & Claytons;
 Clayton Homes, Inc;
 CMA Homes, Inc.
 Vanderhult Mortgage and
 Finance, Inc. and Benjamin
 Joseph Szegier

Month	Day	Year	CLERK'S FEES	Plffs.	Defts.	SHERIFF'S FEES	Plffs.	Defts.	TO WHOM PAID
10	14	04	Filing fee		100 ⁰⁰				
10	14	04	Relinquish Original Petition						
10	15	04	Issuing Orig citation		16 ⁰⁰				
10	15	04	1 copy K.T.C.						
						Jury Fee	5 ⁰⁰		
						WITNESS FEES			

<u>DATE</u>			<u>CREDITS</u>	<u>BY WHOM PAID</u>			
Month	Day	Year		Plaintiff	Defendant	TOTAL	
10	14	04	Bellington • Remedy	Paid	\$827	22	as
			"				
			"				
			"				
			"				
			"				
			"				
			Grand Total of Credits				

[illegible]

RECAPITULATION			
		Clerk's Costs,	
		Sheriff's Costs,	
		Witness' Costs,	
		Jury Fees,	
		Printer's Fees,	
		Notary's Deposition Etc.	
		Amount of Judgement.	

FILED 334 11/10/04 PM

CAUSE NO. DC-04-334

NOV 11 2004

KATHY PEREZ AND
ROGELIO MUNOZ, JR.

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IN THE DISTRICT COURT

DISTRICT COURT, DALLAS COUNTY, TEXAS
229TH JUDICIAL DISTRICT

VS.

KEVIN T. CLAYTON;
CLAYTON HOMES, INC.;
CMH HOMES, INC.;
VANDERBILT MORTGAGE AND
FINANCE, INC.; AND BENJAMIN
JOSEPH FRAZIER

229TH JUDICIAL DISTRICT

DUVAL COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Kathy Perez and Rogelio Munoz, Jr., Plaintiffs herein, complaining of Kevin T. Clayton, Clayton Homes, Inc., CMH Homes, Inc., Vanderbilt Mortgage and Finance, Inc., and Benjamin Joseph Frazier, Defendants herein, and for their cause of action would show as follows:

I.

DISCOVERY TRACK

1.1 Plaintiffs plead that this case should be assigned to Discovery Track Three.

II.

THE PARTIES

2.1 Plaintiffs Kathy Perez and Rogelio Munoz, Jr. are citizens of the United States and are residents of the state of Texas.

2.2 Defendant, Kevin T. Clayton, is a non-resident, individual, doing business, engaging in business and transacting business throughout the state of Texas, and who has been granted, sold, and conveyed property situated in virtually every county in the State of Texas and may be served pursuant to the Texas Long-Arm

10/11/04

B

Statute, Texas Civil Practice & Remedies Code Section 17.041-.045, through the Secretary of State of Texas. **Defendant's home address is 102 River Place, Louisville, Tennessee 37777.**

2.3 Defendant, Clayton Homes, Inc., a wholly owned subsidiary of Berkshire Hathaway, Inc. and the successor corporation of Clayton Homes, Inc., a Tennessee corporation, is a foreign corporation, incorporated in the state of Delaware, doing business, engaging in business and transacting business in the state of Texas, with business offices throughout the state of Texas and having its principal place of business in the state of Texas in Comal County, and may be served pursuant to the Texas Long-Arm Statute, Texas Civil Practice & Remedies Code Section 17.041-.045, through the Secretary of State of Texas **at Wilmington Trust SP Services, Inc., 1105 N. Market Street, Suite 1300, Wilmington, Delaware 19801.**

2.4 Defendant, CMH Homes, Inc., is foreign corporation, incorporated in the state of Tennessee, doing business, engaging in business and transacting business in the state of Texas, and may be served with process by serving its Texas registered agent for service of process, **C.T. Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.**

2.5 Defendant, Vanderbilt Mortgage and Finance, Inc., is a foreign corporation, incorporated in the state of Tennessee, doing business, engaging in business and transacting business in the state of Texas, and may be served with process by serving its Texas registered agent for service of process, **C.T. Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.**

2.6 Defendant, Benjamin Joseph Frazier, is an individual and a citizen and resident of Nueces County, Texas, and may be served with process at **8146 Douglas, Corpus Christi, Texas 78408.**

III.
VENUE AND JURISDICTION

3.1 Venue is proper in Duval County, Texas, by virtue of Section 12.004, Texas Civil Practice and Remedies Code, because Duval is the county in which the fraudulent documents were recorded by Defendants, the county in which the property was conveyed to the Defendants, the County in which the conduct complained of herein occurred and because Duval County is the county in which the land is situated in Texas.

3.2 Clayton Homes, Inc. engages in business throughout the state of Texas, having its principal place of business within the state of Texas in Comal County, Texas. Clayton Homes, Inc. engages in the sale, retail, marketing, advertising, manufacturing, and financing of manufactured homes throughout the state of Texas. In conducting its business activities within this state, Clayton Homes, Inc. has purposely established minimum contacts within the state of Texas and the exercise of jurisdiction in Texas comports with fair play and substantial justice. By engaging in business activities throughout the state of Texas, Clayton Homes, Inc. not only purposely availed itself of the privilege of conducting business in this state, but by its business activities invoked the benefits and protections of the laws of the state of Texas. Clayton Homes, Inc.'s business activities in Texas are not random, fortuitous, or attenuated. Clayton Homes, Inc. has repeatedly purposely availed itself of the laws of the state of Texas by purposely submitting itself to the jurisdiction of Texas Courts both as a Plaintiff and a Defendant.

3.3 Kevin T. Clayton was conveyed the property in question by way of a fraudulent Deed of Trust. Specifically, the fraudulent Deed of Trust in question granted, sold and conveyed the property in question to Kevin T. Clayton. Further, pursuant to said fraudulent document, Kevin T. Clayton purportedly paid TEN AND

NO/100 (\$10.00) to Plaintiffs for the property in question which is purportedly acknowledged by the forged signatures on said Deed of Trust. This conveyance occurred within this County.

IV. **STANDING**

4.1 Plaintiffs have standing to bring this suit pursuant to Section 12.003 (a)(8) Texas Civil Practice and Remedies Code in that the Plaintiffs owned an interest in real property that was covered by the fraudulent documents created and filed by the Defendants.

V. **FACTS**

5.1 On or about October 2, 2002 Defendants forged the signature of Kathy Perez to a Deed of Trust that fraudulently conveyed ownership of land situated in Duval County, Texas, to Defendants and then filed or caused to be filed the fraudulent Deed of Trust in Duval County, Texas with the specific intent that the documents filed represent valid ownership in the property by the Defendants.

5.2 On or about October 2, 2002 Defendants forged the signature of Rogelio Munoz, Jr. to a Deed of Trust that fraudulently conveyed ownership of land situated in Duval County, Texas, to Defendants and then filed or caused to be filed the fraudulent Deed of Trust in Duval County, Texas with the specific intent that the documents filed represent valid ownership in the property by the Defendants.

5.3 Plaintiffs would show the Court that the fraudulent record related to the transfer of land, named Kevin T. Clayton as the Trustee. Plaintiffs would show the Court that as President and CEO of both Clayton Homes, Inc. and CMH Homes, Inc., Kevin T. Clayton had the ultimate authority over the single business enterprise known as Clayton Homes. Through this unfettered power, Kevin T. Clayton not only

authorized but encouraged the sale of manufactured homes at any cost to insure a profit. In addition, Kevin T. Clayton through his unfettered power, instructed his employees to name himself, individually, as the trustee in all Deeds of Trust filed in the state of Texas in an effort not only to maximize his own wealth to the expense of the people in Texas, but to maximize profit to the company by fraudulently taking collateral through forgery in an effort to finance and sell a manufactured home. Through the fraudulent conduct of the Defendants, including Kevin T. Clayton, Kevin T. Clayton was named as the Trustee in the forged documents described herein.

5.4 Plaintiffs would further show the Court that the Clayton Homes Defendants and Kevin T. Clayton created a scheme to defraud the American public by selling homes via a land in lieu transaction wherein they would use the land owned by someone other than the individual purchasing the manufactured home in question. No other manufactured home company in the United States uses this fraudulent scheme to sell homes. The only way the Clayton Home Defendants are able to use their scheme to sell manufactured homes is because they own the financing company, Defendant, Vanderbilt Mortgage. Knowing that their sales employees would have a difficult time in getting individuals who do not benefit in any way in someone else purchasing a manufactured home to sign away the rights to their family farms and ranches, these Defendants inserted a notary verification that did not require the individual who purportedly signed the documents related to land to appear before a Notary Public to sign the documents. Instead, Clayton Homes included a Notary Public block that purposely allowed their sales employees to notarize documents when the signatory did not sign said documents in their presence. Clayton Homes knew that if their sales employees were required to actually witness the land owner who benefits in no way from the land in lieu transaction signing the documents, that their land in lieu scheme

of selling manufactured homes would fail. In furtherance of this scheme, Clayton Homes actually paid its employees to become notaries to carry out their employment duties with Clayton Homes. Yet, Clayton Homes failed to provide any training to its employees regarding the notarization of documents, failed to provide any guidelines regarding the notarization of documents, failed to have any unwritten policies or procedures concerning the notarization of documents, failed to have any written policies and procedures in place regarding the notarization of document, encouraged and authorized its employees to notarize documents in which such employee had a financial interest.

5.5 Plaintiffs would further show the Court that the Defendants, Clayton Homes, Inc., CMH Homes, Inc., and Vanderbilt Mortgage operate as a single business enterprise of producing, selling, marketing, financing, and insuring manufactured homes. As a single business enterprise, each of these companies has integrated resources and operations to achieve a common business purpose. As a single business enterprise, each company shares common officers, common name, centralized management, shared accounting, common offices, common employees, and shared allocation of profits and losses between each enterprise. As a single business enterprise, these companies have participated, approved, authorized, ratified, and encouraged the conduct complained of herein. Each company as a single business enterprise has profited from the conduct complained of herein.

VI. CAUSES OF ACTION AGAINST DEFENDANTS

6.1 Specifically, as described above, Plaintiffs allege that Defendants filed in Duval County, Texas fraudulent court documents, a fraudulent lien, and/or a fraudulent claim against real property situated in Duval County, Texas with the intent

that the document or other record fraudulently signed evidences a valid lien or claim against real property by Defendants with the intent to cause Plaintiffs to suffer physical injury, financial injury, mental anguish, and emotional distress.

VII. **CIVIL CONSPIRACY**

7.1 Plaintiffs would further show the Court that the conduct of Kevin T. Clayton, Clayton Homes, Inc., CMH Homes, Inc. and Vanderbilt Mortgage and Finance, Inc., constitutes a civil conspiracy to commit fraud and forgery on the American public. Plaintiffs allege that these Defendants were fully aware, approved and authorized fraud and forgery within the business model of Clayton Homes in an effort to sell a manufactured home at any cost. Specifically, these Defendants were fully aware of the conduct complained of in this suit was occurring and failed to take any action to stop the fraud and forgery from occurring. The extent of such civil conspiracy is demonstrated by similar acts of fraud and forgery occurring in virtually every state in which Clayton Homes does business. The above-named Defendants conspired to defraud the American Public by specifically authorizing the acts described herein.

VIII. **FRAUD**

8.1 Plaintiffs would further show the Court that the conduct of Kevin T. Clayton, Clayton Homes, Inc., CMH Homes, Inc. and Vanderbilt Mortgage and Finance, Inc., amounts to fraud. Each of the above Defendants actively participated in the conduct described herein.

8.2 Specifically, Plaintiffs would show the Court that the fraudulent record related to the transfer of land, named Kevin T. Clayton as the Trustee. Plaintiffs would show the Court that as President and CEO of both Clayton Homes, Inc. and CMH

Homes, Inc., Kevin T. Clayton had the ultimate authority over the single business enterprise known as Clayton Homes. Through this unfettered power, Kevin T. Clayton not only authorized but encouraged the sale of manufactured homes at any cost to insure a profit. In addition, Kevin T. Clayton through his unfettered power, instructed his employees to name himself, individually, as the Trustee in all Deeds of Trust filed in the state of Texas in an effort not only to maximize his own wealth to the expense of the people in Texas, but to maximize profit to the company by fraudulently taking collateral through forgery in an effort to finance and sell a manufactured home. Through the fraudulent conduct of the Defendants, including Kevin T. Clayton, Kevin T. Clayton was named as the Trustee in the forged documents described herein.

8.3 Plaintiffs would further show the Court that the Clayton Homes Defendants and Kevin T. Clayton created a scheme to defraud the American public by selling homes via a land in lieu transaction wherein they would use the land owned by someone other than the individual purchasing the manufactured home in question. No other manufactured home company in the United States uses this fraudulent scheme to sell homes. The only way the Clayton Home Defendants are able to use their scheme to sell manufactured homes is because they own the financing company, Defendant, Vanderbilt Mortgage.

8.4 Knowing that their sales employees would have a difficult time in getting individuals who do not benefit in any way in someone else purchasing a manufactured home to sign away the rights to their family farms and ranches, these Defendants inserted a notary verification that did not require the individual who purportedly signed the documents related to land to appear before a Notary Public to sign the documents. Instead, Clayton Homes included a Notary Public block that purposely allowed their sales employees to notarize documents when the signatory did not sign

said documents in their presence. Clayton Homes knew that if their sales employees were required to actually witness the land owner who benefits in no way from the land in lieu transaction signing the documents, that their land in lieu scheme of selling manufactured homes would fail. In furtherance of this scheme, Clayton Homes actually paid its employees to become notaries to carry out their employment duties with Clayton Homes. Yet, Clayton Homes failed to provide any training to its employees regarding the notarization of documents, failed to provide any guidelines regarding the notarization of documents, failed to have any unwritten policies or procedures concerning the notarization of documents, failed to have any written policies and procedures in place regarding the notarization of document, encouraged and authorized its employees to notarize documents in which such employee had a financial interest.

IX.
NEGLIGENCE/MALICE

9.1 Plaintiffs would further show the Court that Clayton Homes, Inc., CMH Homes, Inc. and Vanderbilt Mortgage and Finance, Inc., by and through its agent, servant, ostensible agent, agent by estoppel or borrowed employee, Defendant Benjamin Frazier, who was acting within the course, scope, and authority of such agency relationship and who was acting on behalf of and for the benefit of Clayton Homes, Inc., CMH Homes, Inc. and Vanderbilt Mortgage and Finance, Inc., is vicariously responsible for the fraudulent acts and forgery of Defendant, Benjamin Frazier based on the theory of Respondeat Superior.

9.2 Plaintiffs would further show the Court that Clayton Homes, Inc., CMH Homes, Inc. and Vanderbilt Mortgage and Finance, Inc., by and through its agent, servant, ostensible agent, agent by estoppel or borrowed employee, Defendant Kevin T.

Clayton, who was acting within the course, scope, and authority of such agency relationship and who was acting on behalf of and for the benefit of Clayton Homes, Inc., CMH Homes, Inc. and Vanderbilt Mortgage and Finance, Inc., is vicariously responsible for the fraudulent acts of Defendant, Kevin T. Clayton based on the theory of Respondeat Superior.

9.3 Plaintiffs further assert and allege that at the time of the conduct described herein that Defendants, Clayton Homes, Inc., CMH Homes, Inc., Vanderbilt Mortgage and Finance, Inc., Kevin T. Clayton, and Benjamin Frazier were guilty of various acts and/or omissions which constituted negligence and malice, including but not limited to the following:

1. failing to have appropriate policies and procedures in place to prevent fraud and forgery from occurring;
2. failing to have appropriate policies and procedures in place concerning the proper notarization of documents;
3. failing to properly train its employees;
4. creating a business model with a system of compensation that promotes and encourages fraud and forgery;
5. failing to take any action to prevent further fraud and forgery when they knew or reasonably should have known that fraud was occurring;
6. failing to implement proper policies and procedures to insure that fraud and forgery is not occurring in land in lieu transactions;
7. failing to inspect the signatures upon receipt of said documents for authenticity before approving the land in lieu transaction;
8. failing to properly train and/or supervise its employees to insure that fraud and forgery is not occurring;
9. allowing its employees to notarize documents when the signatory did not sign said document in front of said employee;

10. failing to take any action to correct or remedy the fraudulent conduct described herein after Defendants discovered the conduct of Benjamin Frazier nearly two years ago;
11. allowing its employees to notarize documents related to a transaction in which they have a financial interest;
12. failing to have any written policies and procedures related to the notarization of documents;
13. failing to have any oral policies and procedures related to the notarization of documents;
14. failing to supervise its employees;
15. failing to discipline its employees for fraudulent conduct; and
16. failing to review this transaction for forgeries and other fraud prior to approval of the land in lieu transaction.

Each and all of the above mentioned acts of omission and/or commission constituted negligence and malice and were a proximate cause of damages to Plaintiffs and for which Plaintiffs hereby seek recovery.

9.4 Plaintiffs further plead the discovery rule. As a result of the above-described conduct of the Defendants, Plaintiffs did not discover the wrongful conduct described herein until immediately preceding the filing of suit in this cause. In fact, Defendants knowingly concealed the fraud by failing to provide copies of the purported documents related to land that were filed in the County records to the Plaintiffs and failure to provide Notice of Recession as required by Federal law.

9.5 Plaintiffs further assert and allege that the acts of omission and/or commission of Defendants collectively and/or severely constituted gross negligence and malice in that these Defendants acted with conscience indifference to the rights, safety, or welfare of Plaintiffs and to the Texas and American public.

X.
DAMAGES

10.1 Kathy Perez seeks as damages all damages to which she is legally entitled to pursuant to Section 12.002 (b) Texas Civil Practice and Remedies Code, including the greater of \$10,000.00 or actual damages caused by the violation and court costs, to include all related expenses of bringing this action, including investigative expenses, attorney's fees and exemplary damages. She also seeks as damages all damages to which she is entitled for the conduct of the Defendants as described in detail above, including punitive and exemplary damages as allowed by law.

10.2 Kathy Perez further specifically pleads that the limitation on amount of recovery of punitive damages as set out by Section 41.008 of the Texas Civil Practice & Remedies Code does not apply to the cause of action pled by Plaintiff in that forgery is specifically exempted from any limitation on recovery of punitive damages.

10.3 Rogelio Munoz, Jr. seeks as damages all damages to which he is legally entitled to pursuant to Section 12.002 (b) Texas Civil Practice and Remedies Code, including the greater of \$10,000.00 or actual damages caused by the violation and court costs, to include all related expenses of bringing this action, including investigative expenses, attorney's fees and exemplary damages. He also seeks as damages all damages to which he is entitled for the conduct of the Defendants as described in detail above, including punitive and exemplary damages as allowed by law.

10.4 Rogelio Munoz, Jr. further specifically pleads that the limitation on amount of recovery of punitive damages as set out by Section 41.008 of the Texas Civil Practice & Remedies Code does not apply to the cause of action pled by Plaintiff in that forgery is specifically exempted from any limitation on recovery of punitive damages.

XI.
PRE-JUDGMENT AND POST-JUDGMENT INTEREST

11.1 Plaintiffs seek pre-judgment and post-judgment interest as allowed by law.

XII.
JURY DEMAND

12.1 Plaintiffs request a trial by jury for all issues of fact. A jury fee has been paid timely and properly.

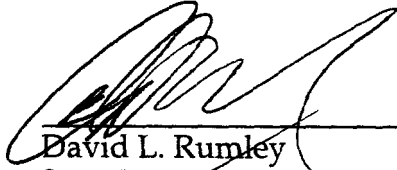
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, that this cause be set down for trial before a jury, and that Plaintiffs recover judgment of and from the Defendants for their actual damages in such amount as the evidence may show and the jury may determine to be proper, together with pre-judgment interest, post-judgment interest, costs of suit, and such other and further relief to which they may show themselves to be justly entitled.

Respectfully submitted,

WINGTON RUMLEY, L.L.P.
800 North Shoreline
14th Floor ♦ South Tower
Corpus Christi, TX 78401
Telephone: (361) 885-7500
Facsimile: (361) 885-0487

By: _____


David L. Rumley
State Bar No. 00791581
~~Jeffrey C. Wington~~
State Bar No. 00785246

Mr. Baldemar Gutierrez
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700 East 3rd Street
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State Bar No. 08640500

AND

Mr. Charles L. Barrera
BARRERA & BARRERA LAW FIRM
107 S. Seguin
San Diego, Texas 78384
P. O. Drawer 1339
Alice, TX 78333
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Facsimile: (361) 279-2508
State Bar No. 01805500

ATTORNEYS FOR PLAINTIFFS

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**KATHY PEREZ AND
ROGELIO MUNOZ, JR.**

VS.

**CLAYTON HOMES, INC.; CMH HOMES,
INC.; VANDERBILT MORTGAGE AND
FINANCE, INC.; BENJAMIN JOSEPH
FRAZIER and KEVIN T. CLAYTON**

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CIVIL ACTION NO.: _____

NOTICE OF REMOVAL TO PLAINTIFFS

TO: KATHY PEREZ AND ROGELIO MUNOZ, JR., Plaintiffs, by and through their attorneys of record, Jeffrey G. Wigington/David L. Rumley, **WIGINGTON RUMLEY, L.L.P.**, 800 North Shoreline, 14th Floor - South Tower, Corpus Christi, Texas 78401.

Please take notice that the civil action, in which KATHY PEREZ AND ROGELIO MUNOZ, JR., are named as Plaintiffs, brought in Cause No. DC-04-334, in the 229th Judicial District Court in Duval County, Texas, styled: "Kathy Perez and Rogelio Munoz, Jr. vs. Clayton Homes, Inc.; CMH Homes, Inc.; Vanderbilt Mortgage and Finance, Inc.; Benjamin Joseph Frazier and Kevin T. Clayton", has been removed from that Court to the United States District Court for the Southern District of Texas, Corpus Christi Division, effective the 10th day of November, 2004. On this day, a Notice of Removal, a copy of which is attached and hereby marked as Exhibit "A" and incorporated herein by reference, was filed with the Clerk of the United States District Court, and a copy of the Notice of Removal has been filed with the Clerk of the State Court, effecting removal pursuant to 28 U.S.C. §1446.

Respectfully submitted,

**THORNTON, SUMMERS, BIECHLIN,
DUNHAM & BROWN, L.C.**

Bank of America - Suite 1000
500 North Shoreline Blvd.
Corpus Christi, Texas 78471
361/ 884-2037 Fax: 361/ 884-5239



Joseph L. Segrato

Federal Id No: 19965

State Bar No: 17993000

Robert L. Guerra

Federal Id No: 3781

State Bar No: 08578560

Vaughan E. Waters

Federal ID. No: 9206

State Bar No. 20916700

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served in accordance with the Federal Rules of Civil Procedure, on this the 10th day of November, 2004.

Mr. Jeffrey G. Wigington
Mr. David L. Rumley
WIGINGTON RUMLEY, L.L.P.
800 North Shoreline
14th Floor - South Tower
Corpus Christi, Texas 78401

Mr. Baldemar Gutierrez
LAW OFFICES OF BALDEMAR GUTIERREZ
700 East 3rd Street
Alice, Texas 78332

Mr. Charles L. Barrera
BARRERA & BARRERA LAW FIRM
107 S. Seguin
San Diego, Texas 78384



Vaughan E. Waters

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

**KATHY PEREZ AND
ROGELIO MUNOZ, JR.**

VS.

**CLAYTON HOMES, INC.; CMH HOMES,
INC.; VANDERBILT MORTGAGE AND
FINANCE, INC.; BENJAMIN JOSEPH
FRAZIER and KEVIN T. CLAYTON**

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CIVIL ACTION NO.: _____

CERTIFICATE OF NOTICE OF FILING

The undersigned, attorneys of record for Defendants CLAYTON HOMES, INC.; CMH HOMES, INC.; VANDERBILT MORTGAGE AND FINANCE, INC.; BENJAMIN JOSEPH FRAZIER and KEVIN T. CLAYTON, certify that on the 10th day of November, 2004, a copy of the Notice of Removal of this action was filed with the Clerk of the 229th Judicial District Court in and for Duval County, Texas and that written notice of filing of the Notice of Removal was mailed to the party named above as Plaintiffs in this action to their attorney of record. Attached to the notices were copies of the Notice of Removal. Removal of this action is effective as of that date, pursuant to 28 U.S.C. § 1446.

Respectfully submitted,

**THORNTON, SUMMERS, BIECHLIN,
DUNHAM & BROWN, L.C.**

Bank of America - Suite 1000
500 North Shoreline Blvd.
Corpus Christi, Texas 78471
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State Bar No: 17993000

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Federal ID. No: 9206

State Bar No. 20916700

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served in accordance with the Federal Rules of Civil Procedure, on this the 10th day of November, 2004.

Mr. Jeffrey G. Wigington

Mr. David L. Rumley

WIGINGTON RUMLEY, L.L.P.

800 North Shoreline

14th Floor - South Tower

Corpus Christi, Texas 78401


Mr. Baldemar Gutierrez

LAW OFFICES OF BALDEMAR GUTIERREZ

700 East 3rd Street

Alice, Texas 78332

Mr. Charles L. Barrera
BARRERA & BARRERA LAW FIRM
107 S. Seguin
San Diego, Texas 78384



Vaughan E. Waters

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Kathy Perez and Rogelio Munoz, Jr.

(b) County of Residence of First Duval
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
David L. Rumley/Jeffrey G. Wigington
WIGINGTON RUMLEY, L.L.P.
800 N. Shoreline - 14th Floor - South Tower
Corpus Christi, Texas 78401 (361/885-7500)

DEFENDANTS

Clayton Homes, Inc.; CMH Homes, Inc.; Vanderbilt Mortgage and Finance, Inc.; Benjamin Joseph Frazier and Kevin T. Clayton

County of Residence of First Listed _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
Joseph L. Segrato/Robert L. Guerra/Vaughan E. Waters
THORNTON & SUMMERS
500 N. Shoreline Blvd. -Bank of America - Suite 1000
Corpus Christi, Texas 78471 (361/884-2037)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State** ☐ 1 ☐ 1 **Incorporated or Principal Place of Business In This State** ☐ 4 ☐ 4
- Citizen of Another State** ☐ 2 ☐ 2 **Incorporated and Principal Place of Business In Another State** ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country** ☐ 3 ☐ 3 **Foreign Nation** ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) _____ ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. §1331 - this is an action originally brought in state district court in which Plaintiffs allege facts stating a claim under the civil RICO statute, involving alleged trafficking in forged deeds of trust.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **CHECK YES only if demanded in complaint: JURY DEMAND:** ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE See appended list of related cases being removed **DOCKET NUMBER** _____

DATE 10 Nov 2004 **SIGNATURE OF ATTORNEY OF RECORD** Vaughan E. Waters

RECEIPT # _____ **AMOUNT** _____ **APPLYING IFP** _____ **JUDGE** _____ **MAG. JUDGE** _____